

on which the Investment Assistance was awarded.

(b) *Exception.* EDA releases all of its Real Property and tangible Personal Property interests in Projects awarded under the Public Works Employment Act of 1976 (Pub. L. 94-369), as amended by the Public Works Employment Act of 1977 (Pub. L. 95-28).

(c)(1) *Unauthorized Use.* Notwithstanding the release of EDA's interest pursuant to paragraphs (a) or (b) of this section, Real Property or tangible Personal Property acquired or improved with Investment Assistance may not be used:

(i) In violation of the nondiscrimination requirements set forth in §302.20 of this chapter; or

(ii) For inherently religious activities prohibited by applicable Federal law.

(2) Violation of this paragraph (c) constitutes an Unauthorized Use of the Real Property or of the tangible Personal Property.

(d) *Release.* (1) Except as provided in paragraph (b) of this section, the release of EDA's interest pursuant to this section is not automatic; it requires EDA's approval, which will not be withheld except for good cause, as determined in EDA's sole discretion. In addition to the restrictions set forth in paragraph (c) of this section, the release may be conditioned upon some activity of the Recipient intended to be pursued as a consequence of the release.

(2) When requesting a release of EDA's interest pursuant to paragraph (a) of this section, the Recipient will be required to disclose to EDA the intended future use of the Real Property or the tangible Personal Property for which the release is requested.

(i) A Recipient not intending to use the Real Property or tangible Personal Property for inherently religious activities following EDA's release will be required to execute a covenant of use. A covenant of use with respect to Real Property shall be recorded in the jurisdiction where the Real Property is located in accordance with §314.8. A covenant of use with respect to items of tangible Personal Property shall be perfected and recorded in accordance with applicable law, with continuances

re-filed as appropriate. *See* §314.9. A covenant of use shall (at a minimum) prohibit the use of the Real Property or the tangible Personal Property:

(A) For inherently religious activities in violation of applicable Federal law; and

(B) For any purpose that would violate the nondiscrimination requirements set forth in §302.20 of this chapter.

(ii) EDA may require a Recipient (or its successors in interest) who intends or foresees the use of Real Property or tangible Personal Property for inherently religious activities following the release of EDA's interest to compensate EDA for the Federal Share of such Property. EDA recommends that a Recipient who intends or foresees the use of Real Property or tangible Personal Property (including by successors of the Recipient) for inherently religious activities to contact EDA well in advance of requesting a release pursuant to this section.

## PART 315—TRADE ADJUSTMENT ASSISTANCE FOR FIRMS

### Subpart A—General Provisions

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315.17 Assistance to Firms in import-impacted industries.

AUTHORITY: 19 U.S.C. 2341 *et seq.*, as amended by Division B, Title I, Subtitle I, Part II of Pub. L. 111–5; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

SOURCE: 74 FR 41598, Aug. 18, 2009, unless otherwise noted.

**Subpart A—General Provisions**

**§ 315.1 Purpose and scope.**

The regulations in this part set forth the responsibilities of the Secretary of Commerce under chapter 3 of title II of the Trade Act concerning Trade Adjustment Assistance for Firms. The statutory authority and responsibilities of the Secretary of Commerce relating to Adjustment Assistance are delegated to EDA. EDA certifies Firms as eligible to apply for Adjustment Assistance, provides technical Adjustment Assistance to Firms and other recipients, and provides assistance to organizations representing trade injured industries.

**§ 315.2 Definitions.**

In addition to the defined terms set forth in § 300.3 of this chapter, the following terms used in this part shall have the following meanings:

*Adjustment Assistance* means technical assistance provided to Firms or industries under chapter 3 of title II of the Trade Act.

*Adjustment Proposal* means a Certified Firm's plan for improving its economic situation.

*Certified Firm* means a Firm which has been determined by EDA to be eligible to apply for Adjustment Assistance.

*Confidential Business Information* means any information submitted to EDA or a TAAC by a Firm that concerns or relates to trade secrets for commercial or financial purposes, which is exempt from public disclosure under 5 U.S.C. 552(b)(4), 5 U.S.C. 552b(c)(4) and 15 CFR part 4.

*Contributed Importantly*, with respect to an Increase in Imports, refers to a cause which is important but not necessarily more important than any other cause. Imports will not be consid-

ered to have Contributed Importantly if other factors were so dominant, acting singly or in combination, that the worker separation or threat thereof or decline in sales or production would have been essentially the same, irrespective of the influence of imports.

*Decreased Absolutely* means a Firm's sales or production has declined by a minimum of five percent relative to its sales or production during the applicable prior time period.

(1) Independent of industry or market fluctuations; and

(2) Relative only to the previous performance of the Firm, unless EDA determines that these limitations in a given case would not be consistent with the purposes of the Trade Act.

*Directly Competitive* means imported articles or services that compete with and are substantially equivalent for commercial purposes (*i.e.*, are adapted for the same function or use and are essentially interchangeable) as the Firm's articles or services. Any Firm that engages in exploring or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.

*Firm* means an individual proprietorship, partnership, joint venture, association, corporation (includes a development corporation), business trust, cooperative, trustee in bankruptcy or receiver under court decree, and includes fishing, agricultural or service sector entities and those which explore, drill or otherwise produce oil or natural gas. *See also* the definition of Service Sector Firm. Pursuant to section 261 of chapter 3 of title II of the Trade Act (19 U.S.C. 2351), a Firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same person, may be considered a single Firm where necessary to prevent unjustifiable benefits. For purposes of receiving benefits under this part, when a Firm owns or controls other Firms, the Firm and such other Firms may be considered a single Firm when they produce or supply like or Directly Competitive articles or services or are exerting essential economic control over one or

more production facilities. Accordingly, such other Firms may include a(n):

(1) *Predecessor*—see the following definition for Successor;

(2) *Successor*—a newly established Firm (that has been in business less than two years) which has purchased substantially all of the assets of a previously operating company (or in some cases a whole distinct division) (such prior company, unit or division, a 'Predecessor') and is able to demonstrate that it continued the operations of the Predecessor which has operated as an autonomous unit, provided that there were no significant transactions between the Predecessor unit and any related parent, subsidiary, or affiliate that would have affected its past performance, and that separate records are available for the Predecessor's operations for at least two years before the petition is submitted. The Successor Firm must have continued virtually all of the Predecessor Firm's operations by producing the same type of products or services, in the same plant, utilizing most of the same machinery and equipment and most of its former workers, and the Predecessor Firm must no longer be in existence;

(3) *Affiliate*—a company (either foreign or domestic) controlled or substantially beneficially owned by substantially the same person or persons that own or control the Firm filing the petition; or

(4) *Subsidiary*—a company (either foreign or domestic) that is wholly owned or effectively controlled by another company.

*Increase in Imports* means an increase of imports of Directly Competitive or Like Articles or Services with articles produced or services supplied by such Firm. EDA may consider as evidence of an Increase in Imports a certification from the Firm's customers that account for a significant percentage of the Firm's decrease in sales or production that they have increased their purchase of imports of Directly Competitive or Like Articles or Services from a foreign country, either absolutely or relative to their acquisition of such Like Articles or Services from suppliers located in the United States.

*Like Articles or Services* means any articles or services, as applicable, which are substantially identical in their intrinsic characteristics.

*Partial Separation* means, with respect to any employment in a Firm, either:

(1) A reduction in an employee's work hours to 80 percent or less of the employee's average weekly hours during the year of such reductions as compared to the preceding year; or

(2) A reduction in the employee's weekly wage to 80 percent or less of his/her average weekly wage during the year of such reduction as compared to the preceding year.

*Person* means an individual, organization or group.

*Record* means any of the following:

(1) A petition for certification of eligibility to qualify for Adjustment Assistance;

(2) Any supporting information submitted by a petitioner;

(3) The report of an EDA investigation with respect to petition; and

(4) Any information developed during an investigation or in connection with any public hearing held on a petition.

*Service Sector Firm* means a Firm engaged in the business of supplying services. For purposes of receiving benefits under this part, when a Service Sector Firm owns or controls other Service Sector Firms, the Service Sector Firm and such other Service Sector Firms may be considered a single Service Sector Firm when they furnish like or Directly Competitive services or are exerting essential economic control over one or more servicing facilities. Such other Service Sector Firm may be a Predecessor, Successor, Affiliate or Subsidiary, each as defined in the definition of Firm.

*Significant Number or Proportion of Workers* means five percent of a Firm's work force or 50 workers, whichever is less, unless EDA determines that these limitations in a given case would not be consistent with the purposes of the Trade Act. An individual farmer or fisherman is considered a Significant Number or Proportion of Workers.

*Substantial Interest* means a direct material economic interest in the certification or non-certification of the petitioner.

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*TAAC* means a Trade Adjustment Assistance Center, as more fully described in § 315.5.

*Threat of Total or Partial Separation* means, with respect to any group of workers, one or more events or circumstances clearly demonstrating that a Total or Partial Separation is imminent.

*Total Separation* means, with respect to any employment in a Firm, the laying off or termination of employment of an employee for lack of work.

### § 315.3 Confidential Business Information.

EDA will follow the procedures set forth in 15 CFR 4.9 for the submission of Confidential Business Information. Submitters should clearly mark and designate as confidential any Confidential Business Information.

### § 315.4 Eligible applicants.

(a) The following entities may apply for assistance to operate a TAAC:

(1) Universities or affiliated organizations;

(2) States or local governments; or

(3) Non-profit organizations.

(b) For purposes of § 315.17 and to the extent funds are appropriated to implement section 265 of the Trade Act, organizations assisting or representing industries in which a substantial number of Firms or workers have been certified as eligible to apply for Adjustment Assistance under sections 223 and 251 of the Trade Act, include:

(1) Existing agencies;

(2) Private individuals;

(3) Firms;

(4) Universities;

(5) Institutions;

(6) Associations;

(7) Unions; or

(8) Other non-profit industry organizations.

### § 315.5 TAAC scope, selection, evaluation and awards.

(a) *TAAC purpose and scope.* (1) TAACs are available to assist Firms in obtaining Adjustment Assistance in all 50 U.S. States, the District of Columbia and the Commonwealth of Puerto Rico. TAACs provide Adjustment Assistance in accordance with this part either through their own staffs or by arrange-

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ments with outside consultants. Information concerning TAACs serving particular areas may be obtained from the TAAC Web site at <http://www.taacenters.org> or from EDA at <http://www.eda.gov>.

(2) Prior to submitting a petition for Adjustment Assistance to EDA, a Firm should determine the extent to which a TAAC can provide the required Adjustment Assistance. EDA will provide Adjustment Assistance through TAACs whenever EDA determines that such assistance can be provided most effectively in this manner. Requests for Adjustment Assistance will normally be made through TAACs.

(3) A TAAC generally provides Adjustment Assistance by providing assistance to a:

(i) Firm in preparing its petition for eligibility certification; and

(ii) Certified Firm in diagnosing its strengths and weaknesses, and developing and implementing an Adjustment Proposal.

(b) *TAAC selection.* (1) EDA invites currently funded TAACs to submit either new or amended applications, provided they have performed in a satisfactory manner and complied with previous or current conditions in their Cooperative Agreements with EDA and contingent upon availability of funds. Such TAACs shall submit an application on a form approved by OMB, as well as a proposed budget, narrative scope of work, and such other information as requested by EDA. Acceptance of an application or amended application for a Cooperative Agreement does not ensure funding by EDA.

(2) EDA may invite new applications through a Federal Funding Opportunity ('FFO') announcement. An application will require a narrative scope of work, proposed budget and such other information as requested by EDA. Acceptance of an application does not ensure funding by EDA.

(c) *TAAC evaluation.* (1) EDA generally evaluates currently funded TAACs based on:

(i) Performance under Cooperative Agreements with EDA and compliance with the terms and conditions of such Cooperative Agreements;

(ii) Proposed scope of work, budget and application or amended application; and

(iii) Availability of funds.

(2) EDA generally evaluates new TAACs based on:

(i) Competence in administering business assistance programs;

(ii) Background and experience of staff;

(iii) Proposed scope of work, budget and application; and

(iv) Availability of funds.

(d) *TAAC award requirements.* (1) EDA generally funds a TAAC for a three-year project period consisting of three separate funding periods of 12 months each.

(2) There are no matching share requirements for Adjustment Assistance provided by the TAACs to Firms for certification or for administrative expenses of the TAACs.

#### § 315.6 Firm eligibility for Adjustment Assistance.

(a) Firms participate in the Trade Adjustment Assistance for Firms program in accordance with the following:

(1) Firms apply for certification through a TAAC by completing a petition for certification. The TAAC will assist Firms in completing such petitions (at no cost to the Firms);

(2) Firms certified in accordance with the procedures described in §§ 315.7 and 315.8 must prepare an Adjustment Proposal for Adjustment Assistance from the TAAC ('Adjustment Proposal') and submit it to EDA for approval; and

(3) EDA determines whether the Adjustment Assistance requested in the Adjustment Proposal is eligible based upon the evaluation criteria set forth in subpart D of this part. A Certified Firm may submit a request to the TAAC for Adjustment Assistance to implement an approved Adjustment Proposal.

(b) For certification, EDA evaluates Firms' petitions strictly on the basis of fulfillment of the requirements set forth in § 315.7.

(c) (1) Certified Firms generally receive Adjustment Assistance over a two-year period.

(2) The matching share requirements are as follows:

(i) Each Certified Firm must pay at least 25 percent of the cost of preparing its Adjustment Proposal. Each Certified Firm requesting \$30,000 or less in total Adjustment Assistance in its approved Adjustment Proposal must pay at least 25 percent of the cost of that Adjustment Assistance. Each Certified Firm requesting more than \$30,000 in total Adjustment Assistance in its approved Adjustment Proposal must pay at least 50 percent of the cost of that Adjustment Assistance.

(ii) Organizations representing trade-injured industries must pay at least 50 percent of the total cash cost of the Adjustment Assistance, in addition to appropriate in-kind contributions.

#### Subpart B—Certification of Firms

##### § 315.7 Certification requirements.

(a) *General.* EDA may certify a Firm as eligible to apply for Adjustment Assistance under section 251(c) of the Trade Act if it determines that the petition for certification meets one of the minimum certification thresholds set forth in paragraph (b) of this section. In order to be certified, a Firm must meet the criteria listed under any one of the 5 circumstances described in paragraph (b) of this section.

(b) *Minimum certification thresholds.*

(1) *Twelve-month decline.* Based upon a comparison of the most recent 12-month period for which data are available and the immediately preceding twelve-month period:

(i) A Significant Number or Proportion of Workers in the Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation;

(ii) Either sales or production, or both, of the Firm has Decreased Absolutely; or sales or production, or both, of any article or service that accounted for not less than 25 percent of the total production or sales of the Firm during the 12-month period preceding the most recent 12-month period for which data are available have Decreased Absolutely; and

(iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(2) *Twelve-month versus twenty-four month decline.* Based upon a comparison of the most recent 12-month period for which data are available and the immediately preceding 24-month period:

(i) A Significant Number or Proportion of Workers in the Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation;

(ii) Either average annual sales or production, or both, of the Firm has Decreased Absolutely; or average annual sales or production, or both, of any article or service that accounted for not less than 25 percent of the total production or sales of the Firm during the 24-month period preceding the most recent 12-month period for which data are available have Decreased Absolutely; and

(iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(3) *Twelve-month versus thirty-six month decline.* Based upon a comparison of the most recent 12-month period for which data are available and the immediately preceding 36-month period:

(i) A Significant Number or Proportion of Workers in the Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation;

(ii) Either average annual sales or production, or both, of the Firm has Decreased Absolutely; or average annual sales or production, or both, of any article or service that accounted for not less than 25 percent of the total production or sales of the Firm during the 36-month period preceding the most recent 12-month period for which data are available have Decreased Absolutely; and

(iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(4) *Interim sales or production decline.* Based upon an interim sales or production decline:

(i) Sales or production has Decreased Absolutely for, at minimum, the most recent six-month period during the most recent 12-month period for which

data are available as compared to the same six-month period during the immediately preceding 12-month period;

(ii) During the same base and comparative period of time as sales or production has Decreased Absolutely, a Significant Number or Proportion of Workers in such Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation; and

(iii) During the same base and comparative period of time as sales or production has Decreased Absolutely, an Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

(5) *Interim employment decline.* Based upon an interim employment decline:

(i) A Significant Number or Proportion of Workers in such Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation during, at a minimum, the most recent six-month period during the most recent 12-month period for which data are available as compared to the same six-month period during the immediately preceding 12-month period; and

(ii) Either sales or production of the Firm has Decreased Absolutely during the 12-month period preceding the most recent 12-month period for which data are available; and

(iii) An Increase in Imports has Contributed Importantly to the applicable Total or Partial Separation or Threat of Total or Partial Separation, and to the applicable decline in sales or production or supply of services.

#### § 315.8 Processing petitions for certification.

(a) Firms shall consult with a TAAC for guidance and assistance in the preparation of their petitions for certification.

(b) A Firm seeking certification shall complete a *Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance* (Form ED-840P or any successor form) with the following information about such Firm:

(1) Identification and description of the Firm, including legal form of organization, economic history, major ownership interests, officers, directors,

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management, parent company, Subsidiaries or Affiliates, and production and sales facilities;

(2) Description of goods or services supplied or sold;

(3) Description of imported Directly Competitive or Like Articles or Services with those produced or supplied;

(4) Data on its sales, production and employment for the applicable 24-month, 36-month, or 48-month period, as required under §315.7(b);

(5) One copy of a complete auditor's certified financial report for the entire period covering the petition, or if not available, one copy of the complete profit and loss statements, balance sheets and supporting statements prepared by the Firm's accountants for the entire period covered by the petition; publicly-owned corporations should submit copies of the most recent Form 10-K annual reports (or Form 10-Q quarterly reports, as appropriate) filed with the U.S. Securities and Exchange Commission for the entire period covered by the petition;

(6) Information concerning its major customers and their purchases (or its bids, if there are no major customers); and

(7) Such other information as EDA considers material.

(c) EDA shall determine whether the petition has been properly prepared and can be accepted. Promptly thereafter, EDA shall notify the petitioner that the petition has been accepted or advise the TAAC that the petition has not been accepted, but may be resubmitted at any time without prejudice when the specified deficiencies have been corrected. Any resubmission will be treated as a new petition.

(d) EDA will publish a notice of acceptance of a petition in the FEDERAL REGISTER.

(e) EDA will initiate an investigation to determine whether the petitioner meets the requirements set forth in section 251(c) of the Trade Act and §315.7.

(f) A petitioner may withdraw a petition for certification if EDA receives a request for withdrawal before it makes a certification determination or denial. A Firm may submit a new petition at any time thereafter in accordance with

the requirements of this section and §315.7.

(g) Following acceptance of a petition, EDA will:

(1) Make a determination based on the Record as soon as possible after the petitioning Firm or TAAC has submitted all material. In no event may the determination period exceed 40 days from the date on which EDA accepted the petition; and

(2) Either certify the petitioner as eligible to apply for Adjustment Assistance or deny the petition. In either event, EDA shall promptly give written notice of action to the petitioner. Any written notice to the petitioner of a denial of a petition shall specify the reason(s) for the denial. A petitioner shall not be entitled to resubmit a petition within one year from the date of denial, provided, EDA may waive the one-year limitation for good cause.

### §315.9 Hearings.

EDA will hold a public hearing on an accepted petition if the petitioner or any interested Person found by EDA to have a Substantial Interest in the proceedings submits a request for a hearing no later than 10 days after the date of publication of the notice of acceptance in the FEDERAL REGISTER, under the following procedures:

(a) The petitioner or any interested Person(s) shall have an opportunity to be present, to produce evidence and to be heard;

(b) A request for public hearing must be delivered by hand or by registered mail to EDA. A request by a Person other than the petitioner shall contain:

(1) The name, address and telephone number of the Person requesting the hearing; and

(2) A complete statement of the relationship of the Person requesting the hearing to the petitioner and the subject matter of the petition, and a statement of the nature of its interest in the proceedings.

(c) If EDA determines that the requesting party does not have a Substantial Interest in the proceedings, a written notice of denial shall be sent to the requesting party. The notice shall specify the reasons for the denial;

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(d) EDA shall publish a notice of a public hearing in the FEDERAL REGISTER, containing the subject matter, name of petitioner, and date, time and place of the hearing; and

(e) EDA shall appoint a presiding officer for the hearing who shall respond to all procedural questions.

### **§ 315.10 Loss of certification benefits.**

EDA may terminate a Firm's certification or refuse to extend Adjustment Assistance to a Firm for any of the following reasons:

(a) Failure to submit an acceptable Adjustment Proposal within two years after date of certification. While approval of an Adjustment Proposal may occur after the expiration of such two-year period, a Firm must submit an acceptable Adjustment Proposal before such expiration;

(b) Failure to submit documentation necessary to start implementation or modify its request for Adjustment Assistance consistent with its Adjustment Proposal within six months after approval of the Adjustment Proposal, where two years have elapsed since the date of certification. If the Firm anticipates needing a longer period to submit documentation, it should indicate the longer period in its Adjustment Proposal. If the Firm is unable to submit its documentation within the allowed time, it should notify EDA in writing of the reasons for the delay and submit a new schedule. EDA has the discretion to accept or refuse a new schedule;

(c) EDA has denied the Firm's request for Adjustment Assistance, the time period allowed for the submission of any documentation in support of such request has expired, and two years have elapsed since the date of certification; or

(d) Failure to diligently pursue an approved Adjustment Proposal where five years have elapsed since the date of certification.

### **§ 315.11 Appeals, final determinations and termination of certification.**

(a) Any petitioner may appeal in writing to EDA from a denial of certification, provided that EDA receives the appeal by personal delivery or by registered mail within 60 days from the

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date of notice of denial under § 315.8(g). The appeal must state the grounds on which the appeal is based, including a concise statement of the supporting facts and applicable law. The decision of EDA on the appeal shall be the final determination within the Department. In the absence of an appeal by the petitioner under this paragraph, the determination under § 315.8(g) shall be final.

(b) A Firm, its representative or any other interested domestic party aggrieved by a final determination under paragraph (a) of this section may, within 60 days after notice of such determination, begin a civil action in the United States Court of International Trade for review of such determination, in accordance with section 284 of the Trade Act.

(c) Whenever EDA determines that a Certified Firm no longer requires Adjustment Assistance or for other good cause, EDA will terminate the certification and promptly publish notice of such termination in the FEDERAL REGISTER. The termination will take effect on the date specified in the published notice.

(d) EDA shall immediately notify the petitioner and shall state the reasons for any termination.

## **Subpart C—Protective Provisions**

### **§ 315.12 Recordkeeping.**

Each TAAC shall keep records that fully disclose the amount and disposition of Trade Adjustment Assistance for Firms program funds so as to facilitate an effective audit.

### **§ 315.13 Audit and examination.**

EDA and the Comptroller General of the United States shall have access for the purpose of audit and examination to any books, documents, papers, and records of a Firm, TAAC or other recipient of Adjustment Assistance pertaining to the award of Adjustment Assistance.

### **§ 315.14 Certifications.**

EDA will provide no Adjustment Assistance to any Firm unless the owners, partners, members, directors or officers thereof certify to EDA:

(a) The names of any attorneys, agents, and other Persons engaged by



or on behalf of the Firm for the purpose of expediting applications for such Adjustment Assistance; and

(b) The fees paid or to be paid to any such Person.

#### § 315.15 Conflicts of interest.

EDA will provide no Adjustment Assistance to any Firm under this part unless the owners, partners, or officers execute an agreement binding them and the Firm for a period of two years after such Adjustment Assistance is provided, to refrain from employing, tendering any office or employment to, or retaining for professional services any Person who, on the date such assistance or any part thereof was provided, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee occupying a position or engaging in activities which involved discretion with respect to the provision of such Adjustment Assistance.

### Subpart D—Adjustment Proposals

#### § 315.16 Adjustment proposal requirements.

EDA evaluates Adjustment Proposals based on the following:

(a) EDA must receive the Adjustment Proposal within two years after the date of the certification of the Firm;

(b) The Adjustment Proposal must include a description of any Adjustment Assistance requested to implement such proposal, including financial and other supporting documentation as EDA determines is necessary, based upon either:

(1) An analysis of the Firm's problems, strengths and weaknesses and an assessment of its prospects for recovery; or

(2) If EDA so determines, other available information;

(c) The Adjustment Proposal must:

(1) Be reasonably calculated to contribute materially to the economic adjustment of the Firm (*i.e.*, that such proposal will constructively assist the Firm to establish a competitive position in the same or a different industry);

(2) Give adequate consideration to the interests of a sufficient number of

separated workers of the Firm, by providing, for example, that the Firm will:

(i) Give a rehiring preference to such workers;

(ii) Make efforts to find new work for a number of such workers; and

(iii) Assist such workers in obtaining benefits under available programs; and

(3) Demonstrate that the Firm will make all reasonable efforts to use its own resources for its recovery, though under certain circumstances, resources of related Firms or major stockholders will also be considered; and

(d) The Adjustment Assistance identified in the Adjustment Proposal must consist of specialized consulting services designed to assist the Firm in becoming more competitive in the global marketplace. For this purpose, Adjustment Assistance generally consists of knowledge-based services such as market penetration studies, customized business improvements, and designs for new products. Adjustment Assistance does not include expenditures for capital improvements or for the purchase of business machinery or supplies.

### Subpart E—Assistance to Industries

#### § 315.17 Assistance to firms in import-impacted industries.

(a) Whenever the International Trade Commission makes an affirmative finding under section 202(B) of the Trade Act that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, EDA shall provide to the Firms in such industry assistance in the preparation and processing of petitions and applications for benefits under programs which may facilitate the orderly adjustment to import competition of such Firms.

(b) EDA may provide Adjustment Assistance, on such terms and conditions as EDA deems appropriate, for the establishment of industry-wide programs for new product development, new process development, export development or other uses consistent with the purposes of the Trade Act and this part.

(c) Expenditures for Adjustment Assistance under this section may be up to \$10,000,000 annually per industry,

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subject to availability of funds, and shall be made under such terms and conditions as EDA deems appropriate.